

United States Postal Service and National Association of Letter Carriers Branch 283, a/w National Association of Letter Carriers, AFL-CIO. Case 16-CA-21816

August 21, 2003

DECISION AND ORDER

BY MEMBERS LIEBMAN, WALSH, AND ACOSTA

On January 14, 2003, Administrative Law Judge George Carson II issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt his recommended Order as modified.

In the absence of exceptions, we adopt the judge's finding that the Respondent violated Section 8(a)(5) and (1) by refusing to provide requested relevant information on multiple instances between December 28, 2001, and March 20, 2002. The General Counsel has requested that the judge's recommended remedy be modified to require the Respondent to post the notice districtwide and to read the notice aloud in the presence of a Board agent at all facilities within the Houston district. We grant the General Counsel's request to order the Respondent to post the notice districtwide, but we deny the request to order the notice to be read aloud. We shall also impose a broad remedial Order, and remove language in the Order requiring the Union to re-request information.

Background

The Respondent has a history of violating Section 8(a)(5) and (1) by failing to provide requested relevant information at many of its locations over the past two decades.¹ The Respondent has shown a particular tendency to violate Section 8(a)(5) and (1) within its Houston district by failing to provide requested information. See *Postal Service*, JD(ATL)-39-02 (NLRB Division of Judges, 2002) (refusals to furnish information in the Houston district, including the facility at issue in the in-

stant case).² Because of the similar nature of the violations committed at locations across the district, the judge in that case found it unlikely that the violations were coincidental. In the present case, violations of the same type were committed again by the Respondent at its North Shepherd Station in the Houston district.

Districtwide Notice Posting

When there is a "clear pattern or practice of unlawful conduct," the Board may find a broader posting appropriate, regardless of the egregiousness of the particular violations at issue. See *John J. Hudson, Inc.*, 275 NLRB 874 fn. 2 (1985). Posting a notice at multiple locations of an employer may be appropriate where the employer has a history of engaging in unfair labor practices. See *Miller Group*, 310 NLRB 1235 fn. 4 (1993), enfd. mem. 30 F.3d 1487 (3d Cir. 1994).

Although the record evidence does not show that the Respondent has an explicit organizational policy of refusing to comply with information requests, violations of Section 8(a)(5) and (1) involving failures to provide information have occurred at the Respondent's facilities, and repeatedly within the Houston district. The site-specific notice postings that have been used in previous cases have not been successful in eradicating this pattern of misconduct, because these types of violations have continued to occur. Therefore, we find that it is appropriate to impose certain additional remedies to better effectuate the purposes of the Act.

Because the Respondent here has committed numerous violations of the same type on a districtwide basis in the past, and has been warned repeatedly not to engage in its unlawful conduct, but nonetheless has persisted in violating the Act, we find merit in the General Counsel's exception requesting that the notice be posted at all facilities in the Houston district as a whole. Rather, we find a districtwide posting in this case to be necessary due to the Respondent's repeated violations in this district and the absence of any evidence that the Respondent has taken any affirmative steps to control its misconduct.³

² A judge's decision to which no exceptions are filed may be considered as evidence that a respondent has a proclivity to violate the Act. See *Operating Engineers Local 12 (Associated Engineers)*, 270 NLRB 1172 (1984).

³ Member Acosta does not agree that the extraordinary remedies of a district-wide posting, and a broad order (given by his colleagues below) are warranted in this case. The violations here were site-specific; to the extent the Respondent's practices give rise to a concern about the Houston district as a whole, they are addressed by the district-wide posting in *Postal Service*, JD(ATL)-39-02. Because the violation in the present case occurred before we issued that decision, we have no basis for concluding that the remedies ordered there will not be effective in curbing the Respondent's unlawful conduct.

Member Acosta further observes that the violations in this case are the result of the Respondent's failure to respond to information requests

¹ See *Postal Service*, 337 NLRB 820 (2002); *Postal Service*, 332 NLRB 635 (2000); *Postal Service*, 321 NLRB 1199 (1996), enf. denied 128 F.3d 280 (5th Cir. 1997); *Postal Service*, 310 NLRB 701 (1993); *Postal Service*, 310 NLRB 530 (1993); *Postal Service*, 308 NLRB 358 (1992); *Postal Service*, 307 NLRB 1105 (1992), enfd. 17 F.3d 1434 (4th Cir. 1994); *Postal Service*, 305 NLRB 997 (1991); *Postal Service*, 303 NLRB 463 (1991), enfd. 969 F.2d 1064 (D.C. Cir. 1992); *Postal Service*, 289 NLRB 942 (1988), enfd. 888 F.2d 1568 (11th Cir. 1989); *Postal Service*, 280 NLRB 685 (1986), enfd. 841 F.2d 141 (6th Cir. 1988); *Postal Service*, 276 NLRB 1282 (1985).

Notice Reading

We decline to require that the Respondent read the Board's notice based on the exercise of our discretion. Generally this remedy has been imposed where the violations are so numerous and serious that the reading aloud of a notice is considered necessary to enable employees to exercise their Section 7 rights in an atmosphere free of coercion, or where the violations in a case are egregious. See *Ishikawa Gasket America, Inc.*, 337 NLRB 175 (2001).

Such circumstances are not present here. While the Respondent's violations were numerous, they were limited to sporadic refusals to provide requested information. Accordingly, these violations cannot be characterized as egregious. Our remedy of having the notice posted at all facilities within the Houston district is, at this time, adequate to reassure employees of their ability to exercise their Section 7 rights.⁴

Broad Order

We find it appropriate to provide broad injunctive language in our order, barring the Respondent from engaging in any other unlawful conduct. In *Hickmott Foods*, 242 NLRB 1357, 1357 (1979), the Board stated that a broad cease-and-desist order is warranted "when a respondent is shown to have a proclivity to violate the Act or has engaged in such egregious or widespread misconduct as to demonstrate a general disregard for the employees' fundamental statutory rights." A proclivity to violate the Act is typically found where a respondent has a history of violations based on similar unlawful conduct. See *Control Services*, 314 NLRB 421, 421 (1994) (employer had a proclivity to violate the Act based on violations in that case and two prior cases); *Iron Workers Local 433 (United Steel)*, 293 NLRB 621, 623 (1989)

filed by a steward at one facility within the district. The steward testified that he files over 200 contractual grievances a year, most of them accompanied by requests for information. Although the Respondent does not contest the merits of the violation in this case, it is apparent that the dispute was parochial in nature. In addition, as the majority concedes, there was no evidence of intent, and the violations were "sporadic."

Neither the General Counsel nor the Charging Party has requested a broad order in this case. Member Acosta thus finds that it is inappropriate to grant one on these facts.

⁴ Contrary to his colleagues, Member Walsh would grant the General Counsel's request that the notice be read aloud to employees in the presence of a Board Agent, but only at the Respondent's North Shepherd Station. In Member Walsh's view, the Respondent's recidivist conduct at the North Shepherd Station is sufficiently egregious to warrant this special remedy. Furthermore, as the Board has previously noted, "the public reading of the notice is an 'effective but moderate way to let in a warming wind of information and, more important, reassurance.'" *Service Industries*, 319 NLRB 231, 232 (1995), enfd. 107 F.3d 923 (D.C. Cir. 1997) (quoting *J. P. Stevens & Co. v. NLRB*, 417 F.2d 533, 540 (5th Cir. 1969).

(same). Such "repeat offenders" are subject to broad injunctive relief. See *Grinnell Fire Protection Systems Co.*, 335 NLRB 473 (2001). As discussed above, the Respondent has repeatedly refused to provide requested relevant information to the Union at many of its locations over a period of many years. Because of the Respondent's recalcitrance on this issue, we find a broad order appropriate in this case.⁵

Finally, we have further modified the judge's recommended Order to require the Respondent to provide the Union with the information that it requested, without the necessity of making a new request. See *I & F Corp.*, 322 NLRB 1037 fn. 1 (1997), enfd. 191 F.3d 452 (6th Cir. 1999).

ORDER

The National Labor Relations Board adopts as its Order the recommended Order of the administrative law judge as modified below and orders that the Respondent, United States Postal Service, Houston, Texas, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified:

1. Substitute the following for paragraph 1(b).

"(b) In any other manner restraining or coercing its employees in the exercise of their Section 7 rights to organize and bargain collectively or to refrain from such activities."

2. Delete the phrase "upon re-request" from paragraph 2(a).

3. Substitute the following for the first sentence in paragraph 2(b):

"(b) Within 14 days after service by the Region, post at all its facilities within the Houston, Texas district, copies of the attached notice marked 'Appendix.'"⁵

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

⁵ Although no exception was filed requesting a broad order, the Board may exercise its remedial discretion even in the absence of exceptions. See, e.g., *WestPac Electric*, 321 NLRB 1322 (1996).

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with the National Association of Letter Carriers, AFL–CIO, by failing and refusing to provide, or failing and refusing to provide in a timely manner, to that Union information it requested between December 28, 2001, and March 20, 2002, the information being relevant and necessary to the Union for those of you for whom that Union is your collective-bargaining representative.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL promptly furnish the Union with information that we previously failed and refused to provide in the manner set forth in the remedy section of the decision.

UNITED STATES POSTAL SERVICE

Linda M. Reeder, Esq., for the General Counsel.
Ernest A. Burford, Esq., for the Respondent.

DECISION

STATEMENT OF THE CASE

GEORGE CARSON II, Administrative Law Judge. This case was tried in Houston, Texas, on November 4 and 5, 2002, pursuant to a charge filed on March 27, 2002, and a complaint that issued on July 19, 2002.¹ The complaint alleges that the Respondent violated Section 8(a)(1) and (5) of the National Labor Relations Act by failing and refusing to provide relevant information requested by the Union. The Respondent's answer denies all alleged violations of the Act. I find that the evidence does establish that the Respondent did violate the Act as alleged in several of the paragraphs of the complaint.

On the entire record,² including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Board has jurisdiction of this matter pursuant to Section 1209 of the Postal Reorganization Act, 39 U.S.C. Section 1209. The answer admits, and I find and conclude, that the United States Postal Service (the Respondent or the Postal Service) is an employer subject to the jurisdiction of the National Labor Relations Board.

¹ All dates are in 2002 unless otherwise indicated.

² R. Exh. 16 was received upon withdrawal of the General Counsel's objection. The index of the Tr. 300 is corrected to reflect receipt of the Exh. at p. 363.

The Respondents answer admits, and I find and conclude, that National Association of Letter Carriers Branch 283, affiliated with National Association of Letter Carriers, AFL–CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Overview

This case involves multiple information requests made by Mark Kessinger, chief steward of the Union at the Postal Services North Shepherd Station in Houston, Texas. Kessinger has been employed by the Postal Service for 20 years as a letter carrier. For 19 of those years he has also served as a steward at the North Shepherd Station. The chief management official at the North Shepherd Station is Station Manager Sandy Duplaine.³

Kessinger acknowledges filing over 200 grievances a year, virtually all of which are accompanied by information requests. The record herein confirms several occasions when Kessinger presented supervisors with multiple requests at the same time. Kessinger acknowledges regularly receiving information in response to his requests, but testified that, upon the occasions set out in the complaint, he received no response.

In Houston, where there are multiple Postal Service stations, grievances are addressed informally at step A with the appropriate station supervisor. If the grievance is not resolved, a formal step-A meeting is held with the respective station manager. Grievances not resolved at the formal step-A meeting may be appealed to a joint management and union panel designated as the dispute resolution team, the DRT. An appeal must be made within 7 days from the formal step-A decision. When an appeal file is sent to the DRT, it is supposed to be complete. The Union must appeal within the time limits to preserve the grievance even if requested relevant information has not been provided. The DRT will, depending upon the nature of the grievance, remand a grievance that is improperly documented or act upon it even in the absence of documentation. For example, although the Postal Service failed to provide Kessinger with requested information relating to Christmas and New Year holiday assignments in December 2001, the DRT noted the absence of documentation but nevertheless denied the grievance relating to improper posting of the holiday schedule since Kessinger failed to identify any employee who was adversely affected.

The parties have agreed upon a local 24/48-hour rule which provides that the Postal Service will permit an employee to consult with a steward within 24 hours of a request and will, upon the request of a steward for time to investigate a potential grievance, grant that time within 48 hours of the request. The

³ The appropriate unit is:

All letter carriers; but excluding managerial and supervisory employees, professional employees, employees engaged in personnel work in other than a purely nonconfidential clerical capacity, security guards, Postal Inspection Service employees, employees in the supplemental workforce as defined in Article 7, rural letter carriers, mailhandlers, maintenance employees, special delivery messengers, motor vehicle employees, and postal clerks.

foregoing is relevant to this proceeding in that the complaint alleges several instances in which Kessinger requested, but was not given, copies of the form 13 pursuant to which various employees had purportedly requested, but were not granted, the opportunity to consult with a steward. In the past, form 13s were completed in triplicate with carbons. At some of the times relevant to this proceeding, a single request was signed by the employee. Copies were supposed to be made, with one going to the Union. Kessinger's testimony that this did not always occur is uncontradicted.

Upon learning of a potential grievance, Kessinger would normally request information prior to the informal step-A meeting. In those instances in which it was not provided, Kessinger would, at the formal step-A meeting with Station Manager Duplechine, review the grievance and state that "there is a documentation request outstanding." When I questioned whether he would then stop and explain that the Union really needed particular documents, saying, "I really need this stuff," Kessinger answered, "No." This suggestion of the absence of effective communication is confirmed by a decision of the DRT dated June 12 which notes that "[n]either management nor the union, at the North Shepherd Station appear to be working in good faith as it pertains to the Dispute Resolution Process."

Kessinger, in the course of his testimony, described several instances of insensitive behavior by Postal Service managers at the North Shepherd Station. His testimony, such as his unsolicited remark "the same scheme that they had used on me," also reflected palpable hostility towards those managers. Whether Kessinger's hostility is justified is not an issue. Suffice it to say, I find that his hostility colored his testimony. Kessinger was not completely candid. Although testifying on direct examination regarding his supervisor's denial of a request for a change of his schedule, he did not admit that Station Manager Duplechine had later granted the request until after she testified and he was recalled on other matters in rebuttal. At that time, Kessinger admitted that Duplechine had granted the requested change of schedule. Despite Kessinger's hostility, documents reflecting the requests he made to identified supervisors exist with regard to all but three of the information requests that are the subject of the complaint. The Respondent's supervisors, in most instances, did not assert that they had provided the information sought. Typically, counsel for the Respondent would ask whether there was any reason that the supervisors would not provide the type of information being sought in a particular request and the witness would answer, "No." I shall individually address each instance in which information was purportedly provided.

The failure to be completely candid was not limited to Kessinger. Supervisor Marie Adorno testified that, whenever she received a request for "anything having to do with pay," she would give the request to 204-B Supervisor Becky Stiltner, implying that Stiltner would respond to the request. Supervisor Stiltner testified that she did receive these requests, but would give the information to the supervisor who gave the request to her. She did not release information directly to the requesting steward. Adorno was not recalled to clarify her prior testimony.

Near the end of the first day of the hearing, it was disclosed that the initial case file, which included Kessinger's original

affidavit, had been lost and all efforts to find it had failed. Kessinger thereafter executed a second affidavit. Counsel for the Respondent argued that the Respondent was prejudiced and deprived of any exculpatory information that may have existed. Regarding exculpatory information, precedent establishes that the General Counsel is not required to "come forward with inconsistencies or exculpatory evidence." *Multimatic Products*, 288 NLRB 1279, 1342 (1988). Regarding the lost file, when addressing a similar circumstance in *Dwight-Eubank Rambler*, 152 NLRB 1433 (1965), the Board refused to strike the testimony of witnesses whose affidavits had been lost noting that the "later affidavits covering the subject matter of the lost affidavits" were provided to counsel. The Respondent has not established any prejudice with regard to the absence of Kessinger's initial affidavit. Each information request upon which I predicate a violation is established by a document delivered by Kessinger to a named supervisor. I am recommending dismissal of all allegations that are dependent upon Kessinger's assertion of delivery to an unidentified supervisor.

B. Contentions of the Parties

The Respondents brief of five pages does not address any of the specific allegations of the complaint. It refers to an alleged admonition of Kessinger by Chief National Business Agent Gene Goodwin for filing frivolous grievances, an assertion that is not established by probative record evidence. Kessinger acknowledged that Goodwin had initially stated that he should not be filing grievances regarding predisciplinary interviews but, upon hearing Kessinger's explanation that other things such as violation of *Weingarten* rights and verbal abuse were occurring in predisciplinary interviews, Goodwin "backed down and said that those kinds of things were very grievable." The Respondent argues that information requests associated with frivolous grievances "were also frivolous and submitted in bad faith." Although, as hereinafter discussed, Kessinger did make some duplicative and irrelevant requests, the bulk of the requests were for substantive information that related to grievances concerning the working conditions of the employees that the Union represents and were presumptively relevant. The failure of the Respondent's brief to address the specific allegations of the complaint and argue the absence of relevance relating to specific requests suggests an awareness that the relevance was often self-evident and that any argument would be futile.

The General Counsel addresses each information request, argues that the information requested was relevant, and cites various pertinent cases.

C. Specific Allegations

In addressing the allegations of the complaint, I shall apply longstanding Board precedent as recently summarized in *Postal Service*, 337 NLRB 820, 822 (2002):

The legal standard concerning just what information must be produced is whether or not there is "a probability that such data is relevant and will be of use to the union in fulfilling its statutory duties and responsibilities as the employees exclusive bargaining representative." *Bohemia, Inc.*, 272 NLRB 1128 (1984). The Board's standard, in determining which requests for information must be honored, is a liberal discovery-

type standard. *Brazos Electric Power Cooperative*, 241 NLRB 1016 (1979). The Board, in determining that information is producible, does not pass on the merits of the grievance underlying a request

This decision shall address the numbered complaint paragraphs in order except in those circumstances where multiple information requests address similar issues or are related. Unless otherwise noted, Kessinger testified that the requested information was not provided and no supervisor of the Postal Service specifically testified that the information was provided.

Complaint Paragraphs 10 and 13

On December 28, 2001, Kessinger presented 204-B Supervisor Greg Brown with two information requests. The first requested information to support a class-action grievance regarding the assignment of overtime work on the Christmas holiday. Kessinger had received a complaint from senior carriers who had volunteered to work on Christmas, a double overtime opportunity, but who were not assigned work. The information request sought form 3972, the Christmas work schedule that would show the employees who had actually worked, the holiday bonus or signup sheets that would show who had volunteered to work, the records of clock rings confirming who had actually reported to work and how long they worked, and the overtime desired list from which the most senior employee could be identified. Brown did not testify. The Respondent presented no evidence disputing the relevance of this information. By failing to provide that information, the Respondent violated Section 8(a)(5) of the Act. The request also seeks forms relating to leave, but Kessinger could not recall why he had sought those forms, thus the General Counsel has not established the relevance of that information.

The request that is the subject of paragraph 13 sought the holiday volunteer signup sheets for the upcoming New Year's holiday and the holiday schedule showing whom management had selected to work. Kessinger also presented this request to Brown on December 28, 2001. He explained that his purpose in requesting the foregoing information in advance was to "make sure that if they were violating the contract, that we could fix it before the infraction took place rather than try to remedy it after the fact." He acknowledged that the holiday schedule showing who was scheduled to work was posted prior to the holiday and that there were only seven or eight senior carriers who would have worked. Although Kessinger could have obtained the requested information regarding who was scheduled to work by writing down the names from the posted schedule, he would have been unable to establish who was harmed without the volunteer signup sheets. The Respondent did not dispute his testimony that that information was not provided. By failing to provide the holiday schedule and volunteer signup sheets for New Year's Day, the Respondent violated Section 8(a)(5) of the Act.

I am mindful that the underlying grievance filed regarding these postings was denied by the DRT. The DRT decision notes that the Union, "should have, at minimum, provided a list of . . . those harmed." Although that notation effectively chided Kessinger for failing to identify any employee who had been adversely affected, the dismissal of the grievance does not alter

the fact that the information sought would have established who, if anyone, had been harmed. Thus, the DRT decision does not establish that the information sought was not relevant.

Complaint Paragraph 11

Kessinger testified that in late November 2001, he did not recall the specific date, he presented an information request to a supervisor whom he does not recall. The request sought, Form 13s submitted by employee Dorothy Bougere. A form 13 is the form used by employees for various purposes, including requesting time to meet with a steward. Bougere had been disciplined for missing work on October 6 and claimed that she had requested to meet with a steward when the discipline was issued but was denied permission to do so. Kessinger also requested "proof [that] D. Bougere was scheduled in [to work]" and Form 3997s showing the clock rings of employees who did work. The grievance was appealed to the DRT and remanded to the station. The remand decision, although directing that the information be provided, reports that the information request was "not acknowledged by management personnel." Counsel for the General Counsel correctly notes that the DRT directed that the information be provided and argues that the Postal Service's "belated compliance" violated the Act. The remand occurred on June 24. The complaint alleges a failure to provide information requested "[a]bout December 2001." Kessinger does not recall the management official to whom he purportedly presented the request that was "not acknowledged by management personnel" upon a date that he does not recall in late November. There is no complaint allegation relating to delay after June 24, the date of the remand. I shall recommend that this allegation be dismissed.

Complaint Paragraph 12

On December 20, 2001, Kessinger testified that he requested Form 13s for requests that employee Karl Jefferson had made to see a steward on December 13 and 18, 2001, but he did not recall to whom he submitted the request. Information requested regarding Jefferson's substantive grievance was provided. The Respondent cannot negatively prove that the request was not presented to an unidentified supervisor. The General Counsel has not established the Respondent's receipt of this request. I shall recommend that this allegation be dismissed.

Complaint Paragraphs 14 and 15

On January 29 at 11:45 a.m., Kessinger presented Supervisor Jessie Guerrero with two information requests relating to employee R. Yarbrough. Yarbrough had been on sick leave and was supposed to bring documentation relative to his condition. Although Yarbrough provided documentation, management determined that it was not acceptable. The first information request seeks the sick leave policy under which the Postal Service determined that the documentation was not acceptable, "copy of 3971s" which are the leave forms submitted by employees applying for sick leave, and the sick leave documentation that Yarbrough had provided. The second request sought form 13s reflecting any request by Yarbrough to see a steward between December 22 and 28, 2001, and "3972 schedule to see steward for 12-22-01 to 12-28-01." Form 3972 is an employ-

ees leave record. Kessinger testified that he sought that form to establish that Yarbrough's request to see a steward occurred before his sick leave began. Supervisor Guerrero testified that he "believed" that he provided the information sought in the first request, that he did provide the form 13 sought in the second request, and that he was unable to access the computer to provide the form 3972 sought in the second request. Although Kessinger testified that he did not become aware of Yarbrough's attempt to see a steward in December until late January, the foregoing requests are both dated December 28, 2001, thus, it would appear that Kessinger backdated the requests. Regardless of any backdating, Guerrero did not receive them until January 29. I do not credit Guerrero's recollection that he "believed" he provided the information sought in the first request, nor do I credit his testimony that he provided the form 13 sought in the second request. Guerrero often answered that he did not recall, much of his testimony was elicited by leading questions, and several of his answers were nonresponsive. Kessinger specifically denied receiving any of the foregoing information, and I credit that testimony. Station Manager Sandy Duplechaine admitted that Kessinger asked for the form 13 at the formal step-A meeting. She did not testify that it had been provided. Duplechaine denied the underlying grievance as being untimely and the grievance was not appealed to the DRT in a timely manner.

Kessinger, on cross-examination, admitted that he had access to the sick leave policy. The Unions possession of the policy is irrelevant. As the Board noted, in similar circumstances, "At a minimum, the Respondent needed to direct the Union to the particular portion of . . . [the policy] on which Respondent relied and to identify the alleged deficiencies . . . [in the] documentation by reference to that section. *Postal Service*, 332 NLRB 635, 638 (2000). Information sought in support of untimely grievances is not irrelevant since "[t]he Board does not pass on the merits of the union's claim that the employer breached the collective bargaining contract." *Postal Service*, 303 NLRB 502, 509 (1991), citing *Island Creek Coal Co.*, 292 NLRB 480 (1989). If the forms 13 and 3972 sought in the second request had revealed that Yarbrough had unsuccessfully sought to see a steward prior to going on sick leave, the parties could agree to reconsider the grievance in which case the sick leave policy, the form 3971s and the documentation submitted by Yarbrough would be relevant. By failing to provide the foregoing information, the Respondent violated Section 8(a)(5) of the Act.

Complaint Paragraph 16

On January 3, Kessinger submitted a request to Supervisor Debra Broussard for "clock rings for all PTFs," i.e., part-time flexible letter carriers, for the period December 10 through December 31, 2001. It also sought form 3997s, the work schedules for the same period. Kessinger testified that employee Tony Steadman, a part-time flexible letter carrier, had complained that other similarly situated employees were receiving more work than he was. The information sought was to support a grievance Kessinger filed on behalf of Steadman. Although Broussard testified that she would have "[n]o problem at all" in providing the information, she did not testify that she did pro-

vide it, and Kessinger testified that it was not provided. By failing to provide the foregoing relevant information, the Respondent violated Section 8(a)(5) of the Act.

Complaint Paragraph 17

On January 12, at 10:30 a.m., Kessinger submitted an information request to Supervisor Maria Adorno for "both requests to see steward" submitted by employee Carol McAllister. McAllister had informed Kessinger that she had twice been denied the opportunity to consult with Kessinger. The request also seeks clock rings for Kessinger and McAllister for the period from December 29, 2001, to January 12 [2002]. Supervisor Adorno testified that she could not recall receiving this request, but she admitted that she signed as having received it. Despite not recalling receipt of the request, Adorno testified that "to the best of [her] knowledge" she provided it. Adorno testified to no present recollection regarding how, to the best of her knowledge, she provided information in response to a request that she did not even recall receiving. I do not credit that testimony. The failure to provide the information that would have established whether management had denied McAllister the opportunity to consult with Kessinger within 24 hours of her request as provided in the 24/48-hour agreement was relevant. By failing to provide McAllister's requests to see a steward and clock rings that would have established the availability of a steward, the Respondent violated Section 8(a)(5) of the Act.

Complaint Paragraph 18

In January, employee Ike Richards complained to Kessinger that he was denied overtime on January 12. On January 15 at 11:05 a.m., Kessinger presented Supervisor Maria Adorno with an information request seeking "clock rings for 1/12/02" to show who worked, form 3997 to show who was scheduled to work, and any "draft notices for 1/12/02." Kessinger explained that a draft notice is a notice that is "placed on the time clock the day before saying these non-volunteer employees are being drafted to come in and work on their non-scheduled day." Kessinger also requested the "OTDL," overtime desired list, a list that employees who desire overtime sign on a quarterly basis. Supervisor Adorno testified that she might have questioned Kessinger regarding exactly what he was referring to regarding "draft notices" but, once clarified, "I would have provided it without any problems." She did not testify that she did provide the information and Kessinger testified that the information was not provided. Adorno's response confirms that that the Respondent did not question the relevance of the information. By failing to provide the foregoing information requested on January 15, the Respondent violated Section 8(a)(5) of the Act.

Complaint Paragraphs 19, 24, 28, and 37

Employees Robert Hulett and Arthur Wiley both had medical restrictions limiting them to an 8-hour workday. Station Manager Duplechaine referred to this as "light duty," but she did not contradict Kessinger's testimony of the 8-hour limitation. Employees who determine that they will be unable to complete their route in the normal time file a form 3996, a request for assistance, that, if granted, authorizes overtime or

results in actual assistance. In the case of both Hulett and Wiley the request would be for actual assistance rather than overtime since both were limited to 8 hours of work. The information requests that are the subject of these complaint allegations relate to occasions that Hulett and Wiley filed form 3996s with management that were denied.

Paragraphs 19 and 28 relate to requests that Kessinger presented to Supervisor Adorno on January 15. Hulett was contending that his supervisor had denied him assistance on his route and then chastised him in two predisciplinary interviews for not completing his route in a timely manner. The first request, as set out in paragraph 19, seeks form 3996, the request for assistance that Hulett had submitted on January 4. The request also seeks the clock rings for Hulett showing the actual time he worked as well as any "cut back slips" submitted by Hulett. These slips, filled out by the carrier, identify what mail the carrier was directed not to deliver in order to complete the route. The request also seeks the work schedule, form 3997, which would show the time the supervisor had allotted the carrier and, according to Kessinger, it would show if other carriers had been allotted time in a similar manner. The final item requested was all information gathered by Supervisor Adorno relating to the predisciplinary interview she had with employee Hulett on January 5. Kessinger recalled informing Adorno that what he specifically was seeking was any information from the "p.m. supervisor" who may have authorized Hulett to take some action other than that which Adorno had directed in the morning. The second request, as set out in paragraph 28, sought all "information gathered by M. Adorno prior to" the second predisciplinary meeting. Kessinger acknowledged that predisciplinary meetings are not grievable but that it was his "position that there are certain things that can be grieved. In other words, a pre-D can't be used as a shield to do other things that are [grievable]." Station Manager Duplechain denied the underlying grievances filed on behalf of Hulett. Upon appeal to the DRT, Kessinger testified that the DRP found that "predisciplinary interviews are not grievable, and they left it at that." The denial of the grievance upon that technical ground does not render irrelevant the request for information that would establish whether the Postal Service was making proper accommodation for employee Hulett's medical restrictions and selectively interviewing him when he sought accommodation for his medical restrictions. Station Manager Duplechain specifically recalled that Kessinger had the clock rings at the formal step-A meeting, but she did not recall whether the other information sought was in Kessinger's possession. The Respondent, by failing to provide the requested information, except for the clock rings relating to Hulett, violated Section 8(a)(5) of the Act.

In addition to the requests made to Supervisor Adorno on behalf of Hulett, Kessinger, on January 15, also sought documents relating to employee Wiley who had, in early January, requested but been denied assistance. The request that is the subject of paragraph 24 seeks all form 3996s submitted by Wiley for the period January 2 through 16, form 3997s, the work schedule showing the amount of time the supervisor estimated the carrier should use, for the same period, and the clock rings for that period for Wiley which would show exactly how

long he worked. Adorno testified only that "[i]f the request was made, I wouldn't see a problem in providing the documentation." Adorno's admission that she would have no problem providing the documentation if it was requested confirms that there is no contention that the information was not relevant. The request for information contains what appears to be Adorno's signature and, although she did not recall the circumstances of her receipt of the request, she did not deny receiving it. A failure to accommodate Wiley's medical restrictions would relate to his working conditions. The information sought to establish such a failure was relevant. By failing to provide that information, the Respondent violated Section 8(a)(5).

In February, Hulett again complained to Kessinger that Supervisor Adorno was denying his requests for assistance and that she had a predisciplinary interview with him. On February 16, Kessinger presented Adorno an information request seeking "three 3996s for R. Hulett for February 12th, 13th and 14th," the requests for assistance that Hulett had told Kessinger he had filed, as well as "copy of restrictions for R. Hulett" in order to determine that Adorno was aware of his restrictions, and "all notes and documents used to support pre-D on February 15th, of 2002" in order to show whether Adorno had considered Hulett's restrictions, the volume reports for route 8815 for February 12, 13, and 14, the days that Hulett requested assistance in order to establish that the request was justified, and the clock rings for 8815, Hulett's route to show whether Hulett had exceeded his medical restrictions and worked overtime or whether a different carrier had delivered any mail that Hulett returned. The DRT dismissed the underlying grievance because "pre-Ds [predisciplinary interviews] are not grievable." As I have already noted, denial of the grievance does not render irrelevant a request for information that would establish whether proper accommodation was being made with regard to Hulett's medical restrictions. By failing to provide the information sought in the request of February 16, the Respondent violated Section 8(a)(5) of the Act.

Complaint Paragraphs 20, 25, 26, and 27.

The issues raised by these paragraphs, chronologically, are the requests of paragraphs 27, then 25, then 20, and finally 26. All four information requests were presented to Supervisor Broussard about 5 p.m. on January 15.

On January 10, Kessinger submitted a request for assistance that was denied. He had to return mail to the facility. On January 11, Kessinger was assigned to deliver the undelivered mail from the previous day and another employee was assigned to his route for January 11.

In the request that is the subject of paragraph 27, Kessinger testified that the basis for the request was a denial of assistance on January 11, rather than January 10. Although Supervisor Broussard testified that the information sought was provided because she "would have to have all the documentation" before conducting a predisciplinary interview with Kessinger on January 10, it is obvious that no documents from January 11 would have been involved in any January 10 interview. Thus, Broussard had to have been referring to some other request and documents. The information sought in the request that is the subject of paragraph 27 is for January 11. Since Kessinger made no

made no request for assistance on January 11, the basis for the request did not exist. A request for this same information was repeated in the request that is the subject of paragraph 25 except for a request for a street observation form. Station Manager Duplechine credibly testified that she informed Kessinger that there had been no formal observation of him on January 11 and Kessinger admitted that there "wasn't a technical street observation." Thus, I shall recommend that paragraph 27 be dismissed.

In the request that is the subject of paragraph 25, Kessinger alleges a denial of his bid rights to his route, 8605, because another carrier was assigned to deliver the mail for his route on January 11 while he was assigned to deliver the mail that he had been unable to deliver the previous day. This request seeks form 3997, the supervisor's schedule, which would show how much time was actually allotted to the route and "clock rings for all assistants on 8605" which would show the amount of time it took the carrier assigned to his route to deliver the mail on that route. In addition to the foregoing, Kessinger also requested any delayed mail report because when mail is not delivered it should "be reported by the station to their superiors saying this mail was a delivery failure." The manner in which management handled the report had no effect upon Kessinger's working conditions and was not relevant. The information showing the amount of time the supervisor allotted to the route and the clock rings showing how long the route actually took would be relevant with regard to how Kessinger was treated in relation to this other carrier, and the Respondent's failure to provide this information violated Section 8(a)(5) of the Act.

On January 15, Kessinger requested a change of schedule from January 18 to 17. His supervisor, Debra Broussard, denied the request citing "business conditions." On January 15 at 5 p.m., Kessinger submitted the request that is subject of paragraph 20, an information request to Broussard requesting an explanation of the business conditions relied upon to deny the change and any "back up" which Kessinger explained meant documentation establishing the business conditions, and "all change of schedules submitted during January of 02," to show that other employees were being granted changes of schedule. Although Station Manager Duplechine thereafter granted Kessinger's requested change of schedule, there is no evidence that the information sought by Kessinger after Broussard's denial was not relevant at the time the request was made. The Respondent's failure to provide this information violated Section 8(a)(5) of the Act.

At the time Kessinger requested the change of schedule, he knew he was going to be absent and that, when a route is vacant for more than 5 days, it should be posted for bids to deliver the route on a temporary basis. Broussard agreed, but placed the triggering length of the vacancy as 7 days. Kessinger observed that his route was not posted. The information request that is the subject of paragraph 26 seeks all postings as well as Kessinger's form 3971, his leave form, which would establish that he was going to be absent for 10 days. In addition to the foregoing, Kessinger requested form 3996, the supervisor's schedule and Form 3997 to determine whether any employees assigned to his route had requested overtime or assistance. The request also seeks the "XSL," extended sick leave list and an-

nual leave roster for 2002 from which the Union could determine if there were other routes that should have been posted. There is no evidence that any employee complained regarding the absence of the posting of Kessinger's route. Nevertheless, in view of Kessinger's uncontradicted testimony that the failure to post the route violated the contract, the information sought was relevant. The Respondent's failure to provide this information violated Section 8(a)(5) of the Act.

Complaint Paragraphs 21, 22, and 23

On January 15 at 5 p.m., Kessinger presented Supervisor Adorno with three information requests all relating to employee Deander Askew. Kessinger testified that the requests were for information relating to an incident on December 19, 2001, and another on January 5, in which Askew had suffered asthmatic attacks during the course of meetings she had with Supervisor Adorno. The first request sought "notes pertaining to incident on about 12/19" and the OSHA log. Kessinger, although admitting that the OSHA log had been made available to him in the past, asserted that it was not provided to him on this occasion. The request also seeks forms 3971 and 3972, leave requests and the leave record for Askew. The second request sought leave requests and the leave record of Askew for January 5 as well as the OSHA log for January 5. The OSHA log is a logbook in which entries are made whenever an incident that requires notation occurs. Kessinger acknowledged that there would not be a log for January 5, that he was actually requesting any pages that reflected entries dated January 5. The third request duplicated the second insofar as it requested form 3971, leave requests for January 5. It also sought any statements given by Askew. Supervisor Adorno, although unable to recall the receipt of the request or any details relating to the circumstances, asserted that, "to the best of [her] knowledge," she provided the information. I do not credit that testimony. Station Manager Duplechine recalled specifically not providing certain information that is not subject to the complaint and specifically providing access to the OSHA log, and I credit her testimony. The DRT, although denying the underlying grievance, noted that employees should not be addressed in the manner in which Adorno addressed Askew. By failing to provide notes pertaining to the incident, forms 3971 and 3972, and any statements by Askew the Respondent violated Section 8(a)(5) of the Act.

Complaint Paragraph 29 was withdrawn

Complaint Paragraphs 30 and 36

Employee Arthur Wiley, in addition to being denied assistance, had, in late December, been denied sick leave. At the same time Kessinger requested the information relating to the denial of assistance to Wiley, Kessinger also submitted to Adorno, on January 15, at 5 p.m., a request for pay records showing the explanation for placing Wiley on leave without pay, his form 3971 requesting sick leave on December 26 and 27, the documentation for the absence submitted by Wiley, and an explanation regarding why Wiley had been denied sick leave.

On February 2, at 11:30 a.m., Kessinger again submitted an information request to Adorno on behalf of Wiley seeking the form 3971 and "all documentation submitted by Wiley for

same,” the same information included in the prior request, none of which had been provided.

Although Station Manager Duplechaine testified that the documentation was present at the formal step-A meeting with Kessinger, she placed that meeting as being in response to the information request of January 15. She testified that there was confusion regarding whether Wiley was to be paid sick leave or annual leave. She further testified that the grievance was actually resolved with an officer of the Letter Carriers named Ferguson. Insofar as both information requests filed by Kessinger relate to sick leave, I credit his testimony that the information was not provided to him after January 15, necessitating the request of February 2, and that Duplechaine was mistaken, confusing the meeting with Kessinger where the information was not provided with the meeting involving Ferguson where the information was provided and the grievance was resolved with payment being made to Wiley. The determination of relevance is as of the time the information is requested. The facts herein establish a request for relevant information and an unreasonable delay in providing that information. By unreasonably delaying the provision of the relevant information initially sought on January 15 and requested again on February 2, the Respondent violated Section 8(a)(5) of the Act.

Complaint Paragraph 31

On January 16, Kessinger gave an information request to Supervisor Adorno seeking the telephone policy. Kessinger testified that the request followed a complaint from employee Kathy Derry who “was complaining that she was talking on the phone, and that the supervisor hung up the phone on her claiming it was a personal phone call.” Kessinger testified that he wanted the policy, which he knew permitted personal phone calls to a limited degree, “to show that it had not been violated.” Adorno testified that the only telephone policy is a policy prohibiting the use of cellular telephones and that the policy is posted. Station Manager Duplechaine testified that she explained to Kessinger that the only telephone policy she had related to cell phones and beepers. When called upon rebuttal, Kessinger did not deny that conversation with Duplechaine, nor did he deny that the policy was posted. I shall recommend that this allegation be dismissed.

Complaint Paragraph 32

On January 15, employee Derry requested leave for a doctor’s appointment. Derry understood that the request was denied and that she had been placed off the clock by Supervisor Adorno. On January 16, Kessinger presented a request for forms 3971 and 3972 for January 15, Derry’s leave request and the leave record that would show how her absence had been recorded. Adorno testified that “Stiltner took care of this area,” but as already noted, Stiltner testified that she provided documentation to the requesting supervisor, not the steward. Kessinger’s testimony that this relevant information affecting Derry’s pay was not provided is uncontradicted. By failing to provide the foregoing information the Respondent violated Section 8(a)(5) of the Act.

Complaint Paragraph 33

Apparently when Derry was discussing her sick leave request with Kessinger, she mentioned that she had sought to speak with him in December, but had been denied that opportunity. Thus, at the same time Kessinger presented the request regarding Derry’s sick leave to Adorno, he also presented a request seeking Form 13s for the period December 20, 2001, through January 15 and clock rings for Derry and Kessinger that would establish that both were present at the same times. Although Adorno testified that she “would” provide this type of information to Kessinger, she did not testify that she did so. By failing to provide the documentation reflecting a potential violation of the parties’ local 24/48 rule, the Respondent violated Section 8(a)(5) of the Act.

Complaint Paragraph 34

In January, employee Clarence Vaughn presented Kessinger with a pay stub dated October 15, 2001, that reflected a deduction from his pay for pay he had received in May. The issue related to whether Vaughn should have been paid when he had been drafted to work but work was interrupted by Hurricane Allison. Notwithstanding that Vaughn presented this information in January, some 3 months after he became aware of the pay deduction, Kessinger filed a grievance and, on January 31, presented Supervisor Adorno with an information request seeking the Form 13 reflecting Vaughn’s request to consult with a steward on January 3, a “copy of NSOTDL (nonscheduled overtime desired list) carriers scheduled to work Allison day” and any “arbitration ruling or policy on Act of God leave for Allison Day.” Kessinger testified that Vaughn had reported to him that he had been told that an arbitration ruling precluded his being paid, but he was not aware of any such ruling and, “I needed a copy of that to see if one it existed, and . . . if they were interpreting it correctly.” Station Manager Duplechaine recalled informing Kessinger that she checked with the “labor office” and thereafter informed Kessinger that “there is no arbitration ruling or policy for Allison that date.” Kessinger did not dispute this testimony when called upon rebuttal. The DRP dismissed the grievance as being untimely. I credit Duplechaine’s un rebutted testimony that she informed Kessinger that there were no rulings or policies relating to Allison Day. Since Vaughn had initially been scheduled to work and was paid, there was no issue relating to his presence on the overtime desired list. The failure of the Respondent to provide a Form 13 for January 3 or state that one did not exist relates to a potential violation of the local 24/48-hour rule. By failing to respond to that portion of the request the Respondent violated Section 8(a)(5) of the Act.

Complaint Paragraph 35

On February 2, Kessinger presented another information request to Supervisor Adorno regarding employee Derry who had been informed that she could not apply the Family Medical Leave Act to any prior absences charged against her. The request includes a request for “FMLA paperwork on file for K. Derry” which Kessinger was seeking in order to establish whether any documentation previously submitted qualified

under the FLMA. Adorno advised Kessinger that he needed to request that paperwork, which had formerly been maintained at the station, from “Ms. McKelvey at the FMLA office” which was in a separate building some 20 minutes from the station. The fact that the Postal Service determined to maintain those documents at a different location should not affect its obligation to obtain such documents upon request. In *Postal Service*, 303 NLRB 502 (1991) the Postal Service was found to have refused to provide relevant information pursuant to the union’s request when the Postmaster at the Walkill facility did not provide the form 50 for employee White but simply advised that White’s form 50 was in the main facility in Poughkeepsie. Id. at 509. By failing to provide the FLMA information the Respondent violated Section 8(a)(5) of the Act.

Complaint Paragraph 38

On February 23, Kessinger presented an information request relating to employee Kathy Derry to 204-B Supervisor Becky Stiltner. Derry had received a 14-day suspension for attendance and filed a grievance. As already noted, Kessinger had requested any documentation relating to Family Medical Leave regarding Derry. In this request, Kessinger sought “any RSL [restricted sick leave] letters in file for grievant” in order to confirm that Derry had, prior to her suspension, had to document any sick leave absence, “any FMLA paperwork on file for grievant,” a repeat of the prior request that Kessinger made in order to establish whether any of Derry’s absences fell under the FMLA, and “any and all policies, directives, etc. relied on to support Adorno’s actions [the suspension].” Kessinger admitted receiving “the discipline package,” and was told that was “all they relied on,” but that he was not told that the “rest of the stuff didn’t exist.” The Postal Service’s representation that the package he was presented was “all they relied on” complied with the third aspect of the Union’s request. The Respondent did not establish that the disciplinary package included the requested restricted sick leave letters or the FMLA documents, documents that at the least would have mitigated Derry’s offense. I find that the failure to respond to the Union’s request for restricted sick leave letters and any FMLA paperwork violated Section 8(a)(5) of the Act.

Complaint Paragraph 39

On February 23, Kessinger presented to Supervisor Adorno another information request relating to employee Kathy Derry. This request related to an alleged denial of bid rights to her route in that Derry had, on February 21, informed Kessinger that she had requested, but been denied, assistance and, on the following day, another carrier had been assigned to case her mail while Derry was sent to deliver mail that had not been delivered the previous day and then, upon her return to the station, returned to her route with the mail for that had been cased by another employee. The request sought form 3996, Derry’s request for assistance on February 21, clock rings for Derry on February 21 and 22, which would confirm the time she actually worked as well as the operations she was performing, the mail volume report for 8808, Derry’s route, on February 21, the date she requested assistance, and the “office & move times for [route] 8808.” The office and move times are

normally posted, but Kessinger testified that “at this time they weren’t.” No witness contradicted this testimony. The information requested would confirm whether the denial of assistance was justified or unjustified. Insofar as requested assistance was denied, Derry’s working conditions were affected. The information sought was relevant and the failure of the Respondent to provide it violated the Act.

Complaint Paragraph 40

On March 1, at 10:20 a.m., Kessinger presented to 204-B Supervisor Becky Stiltner an information request relating to employee Robert Hulett. Hulett had been issued a letter of warning regarding failure to follow instructions by calling in daily when sick. The request sought, “all evidence used to issue LOW [letter of warning] dated 2/19.” A notation on March 2 reflects that, as of that date, no information had been provided, and Kessinger testified that Stiltner informed him that she explained that she couldn’t find any documentation and was continuing to try to obtain the information. Kessinger was asked whether, after March 2, Stiltner came back and said, “I talked to everyone and there just isn’t anything?” Kessinger answered, “I think eventually she did.” Stiltner confirmed that she advised Kessinger that she could not locate the information. The next item on the request was the Form 3971 submitted by Hulett on February 23. Kessinger testified that he sought this document, the leave request, to establish that its approval did not reflect that Hulett was required to call in on a daily basis. The underlying grievance was resolved in Hulett’s favor by the DRT. Although it was unfortunate that Stiltner could not locate the disciplinary package, files do sometimes get misplaced as occurred with the original file in this proceeding that included Kessinger’s initial affidavit. Information that cannot be located cannot be produced and the Union was informed that no information could be found. I shall recommend that this aspect of this allegation be dismissed. Hulett’s leave request was relevant, there is no evidence that it was produced, and by failing to produce that document, the Respondent violated Section 8(a)(5) of the Act.

Complaint Paragraph 41

Employee Arthur Wiley, in January, filed a worker’s compensation claim. Wiley informed Kessinger that he felt that the Postal Service was unnecessarily delaying the processing of that claim. Kessinger testified that he handed a document dated March 7 requesting the worker’s compensation claim form, Form CA-1, and other information to Supervisor Adorno and that she handed it back to him without signing it. Adorno denied refusing to sign, implicitly denying its receipt. Neither Kessinger nor Adorno were totally credible; however, even if I were to credit Kessinger, his testimony establishes failure to accept an information request rather than refusal to respond to a received request. The General Counsel has not established that this request was received by the Respondent and I shall recommend that this allegation be dismissed.

Complaint Paragraphs 42 and 43

Kessinger testified that employee Alex Medrano complained to him that he was being harassed for not working fast enough after complaining about his vehicle. According to Kessinger,

the Postal Service did not repair the vehicle but assigned it to other employees and that Medrano lost time waiting for a substitute vehicle. On March 11, Kessinger presented an information request to 204-B Supervisor Greg Brown who provided some 52 pages of the requested information. Among items requested but not provided were the mail volume reports for the past 14 days and the "repair record for vehicle assigned to 9108," Medrano's route. Kessinger did not know whether Medrano filed either a safety complaint or a grievance regarding the failure to repair the vehicle. On the same date, Kessinger presented Brown with another request that is not subject to the complaint in which he sought, among other information, "vehicle repair tags" for Medrano's vehicle. Next to this request is the notation, "Not any." Since Kessinger was aware that the vehicle had not been sent for repair but was being assigned to other carriers who did not complain about it and had been advised that there were no repair tags for the vehicle, the request for a nonexistent repair record was not relevant. The relevant request would have been for the record of Medrano's complaint and/or an explanation as to why the vehicle had not been repaired. The mail volume reports had potential relevance in that they could establish that Medrano's mail volume remained constant although he had a shorter time to deliver because of the time involved in obtaining another vehicle. By failing to provide that information, the Respondent violated Section 8(a)(5) of the Act.

On March 11, Kessinger also presented an information request regarding Medrano to Supervisor Debra Broussard. That request sought form 3996, a request for assistance, by Medrano that Kessinger understood had been made on March 7 and the March 7 mail volume reports for Medrano's route, 9108, which, according to Kessinger, would provide evidence showing the need for assistance on that route. Kessinger's request to Brown had sought mail volume reports for the past 14 days, thus the request for March 7 should have been included in the response to that request, a response that was not made and that I have found violated the Act. The request also sought the mail volume reports for the zip code ending in 91, a zone that included 10 or 15 carrier routes to show comparative data for other carriers. Insofar as Medrano's complaint was that he was losing time while waiting for a vehicle, the mail volume reports relating to other carriers would not be relevant. Any request for assistance on March 7 would have been relevant. By failing to provide that document or informing Kessinger that it did not exist, the Respondent violated Section 8(a)(5) of the Act.

Complaint Paragraph 44

On March 11, Kessinger presented an information request relating to employee Laticia Angulo to 204-B Supervisor Greg Brown. Angulo had been placed upon restricted sick leave, but contended that her absences were covered by the Family Medical Leave Act. Information at the North Sheppard Station was provided. The request also sought "FMLA on Angulo for past year." Kessinger testified that he was informed that "all the FMLA was sent down to the attendance office." As already discussed with regard to complaint paragraph 35, the Postal Service may not rely upon maintenance of documents at a different location to deny a relevant information request. By fail-

ing to provide Angulo's FLMA documentation, the Respondent violated the Act.

Complaint Paragraph 45 was withdrawn

Complaint Paragraph 46

Kessinger testified that, pursuant to a complaint by Steward Wil Ford that management was working carriers who were not on the overtime desired list, he requested that list and records reflecting who had actually been assigned overtime from a "front line supervisor . . . probably Becky Stiltner." There is no document reflecting the request and Kessinger admitted, "I don't recall," when asked to whom the request was submitted. The Respondent cannot establish that the request was not presented to a supervisor whose identity the General Counsel has not established. I shall recommend that this allegation be dismissed.

Complaint Paragraph 47

Steward Wil Ford, during the holiday rush, requested that an inspection of his route be performed to determine whether it was over standard. Station Manager Duplechaine explained that route inspections are not conducted in December and that Supervisor Guerrero thereafter conducted a route inspection pursuant to Ford's request. Kessinger's initial testimony suggested that no route inspection had occurred and that, on March 19, he presented Adorno with a request for form 3999 [the route inspection report], "the leaving times for the route for the past 14 days" and the "OT [overtime] summary for the route for the past 14 days" to show that overtime was occurring daily. Duplechaine testified that copies of all documents relating to the inspection, including the form 3999, were given to Ford at the time of the inspection. Kessinger testified upon rebuttal that the inspection had occurred and that Ford "was asking for the 3999 [the route inspection report] which he did not receive as an individual." The leaving times and overtime summaries, although relevant in order to justify the request for the inspection, ceased to be relevant once the inspection occurred. Duplechaine's testimony that the form 3999 was given to Ford at the time of the inspection is uncontradicted. Ford did not testify. I credit Duplechaine. I shall recommend that this allegation be dismissed.

Complaint Paragraph 48

In a related matter, Ford contended that he was not being properly compensated pursuant to a local agreement that provided that carriers who worked past 5 o'clock would be paid a prorated premium of \$10 per hour in addition to their regular wages. On March 19, Kessinger presented Adorno with a request for the "pay record showing 5:00 oclock window adjustments for 02," i.e. the month of February and "OT summaries for W. Ford for 02" to show that Ford had worked past 5 p.m. Station Manager Duplechaine testified that she provided the information regarding the 5 o'clock window adjustments, but she did not mention the overtime summaries. Kessinger testified that none of the information sought was provided. Accepting Duplechaine's testimony that the 5 o'clock window adjustments were provided, they would have been of little use absent the overtime summaries to establish that the adjustments were

correct. The absence of those summaries may well account for Kessinger's faulty recollection that none of the information was provided. A grievance on behalf of Ford was settled for \$200. Settlement of the grievance does not excuse the failure to provide the overtime summaries that were clearly relevant at the time they were sought. Failure to provide that information violated Section 8(a)(5) of the Act.

Complaint Paragraph 49

Employee Rodney Yarbrough had been dismissed by the Postal Service. A grievance regarding his dismissal was remanded to the station and, in the interim, Yarbrough was reinstated. The Union contended that Yarbrough should receive pay for the period that he had been removed. The Postal Service, according to Kessinger, "reduced his removal to a suspension of time served." The Union filed a grievance seeking backpay for Yarbrough and Kessinger, on March 20, presented an information request to Supervisor Jesse Guerrero that, among other items, requested a copy of the remand decision. Kessinger initially testified that the Union had a copy of the decision but "we needed also to prove that management had received one." The request also sought the form 3972 record for Yarbrough which would show the period for which he had not been paid. Thereafter, Kessinger altered his testimony and asserted that his copy of the DRT ruling had been attached to another grievance and that he never received a copy of the form 3972. I credit Kessinger's initial answer, that he sought a copy of the DRT ruling in order to "prove that management had received one." The Union had no need to "prove" that the Postal Service had received a copy of the DRT ruling, a decision by a joint union and Postal Service panel. Thus, that request was not relevant. The requested form 3972 was relevant. Supervisor Guerrero did not recall providing the form 3972, thus Kessinger's testimony that the Form 3972 was not provided is uncontradicted. The failure of the Respondent to provide that relevant document violated Section 8(a)(5) of the Act.

CONCLUSION OF LAW

By failing and refusing to provide, and by failing and refusing to provide in a timely manner, the Union with information it requested between December 28, 2001, and March 20, 2002, as found herein, said information being relevant and necessary to the Union as the collective-bargaining representative of the employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Counsel for the General Counsel has requested special remedies, including the posting and reading of a notice at all Houston District facilities. In support of this she cites the decision of Administrative Judge Keltner W. Locke in *United States Postal Service*, JD(ATL)-39-02. Judge Locke's decision, noting the Respondents repeated violations and recommending a district-wide posting, issued on August 2, 2002, well after the viola-

tions alleged herein. That case is pending before the Board. Assuming the Board adopts Judge Locke's recommended order, a second districtwide posting would be superfluous.

The Respondent having failed and refused to provide the Union with information it requested between December 28, 2001, and March 20, 2002, it will be recommended that Respondent cease and desist therefrom and to promptly, upon re-request, supply said information, as set forth below, to the Union.

The information sought in paragraphs 30 and 36 was received, albeit in an untimely manner. With respect to the requests alleged in paragraphs 20, 40, and 48, the grievances were sustained or adjusted notwithstanding the unlawful failure of the Respondent to provide the requested information. Thus, that requested information has no current relevancy and the recommended cease-and-desist order constitutes a sufficient remedy. See *Westinghouse Electric Corp.*, 304 NLRB 703,709 (1991).

Counsel for the General Counsel, both at the hearing and in the brief, has requested that the Respondent be ordered to "reinstate grievances in the grievance procedure which were lost because of Respondent's failure to provide information" At the outset of the hearing I stated that it did not appear to me that the foregoing was a special remedy, rather it would be a make-whole remedy, and that it was my intention to include such a remedy in my recommended Order. My stated intention was contrary to Board precedent. In ordering the Respondent to reinstate a grievance, I would effectively be ordering the waiver of time limitations agreed upon by the parties and incorporated in their collective-bargaining agreement. Although I have found no case that states that I lack the authority to do so, that principle is implicit in *Metropolitan Edison Co.*, 330 NLRB 107, 109 (1999), and *Postal Service*, 307 NLRB 429 at fn. 2 (1992). Thus, I must deny the request to order reinstatement of grievances.

Although denying the foregoing request, I shall recommend that the Respondent be required, upon re-request, to provide any of the information that I have found to have been unlawfully withheld as set forth in paragraphs 10, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 28, 32, 33, 34, 35, 37, 38, 39, 42, 43, 44, and 49, or inform the Union that the information does not exist. See *Postal Service*, supra, 303 NLRB at 509.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁴

ORDER

The Respondent, United States Postal Service, Houston, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with National Association of Letter Carriers Branch 283, affiliated with National Association of Letter Carriers, AFL-CIO by failing and refusing to provide, or failing and refusing to provide in a timely manner, the Union with information it requested between December 28, 2001, and March 20, 2002, said information being relevant and necessary to the Union as the collective-bargaining

⁴ If no exceptions are filed as provided by Sec. 102.46 of the Boards Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

representative of employees in the following unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All letter carriers; but excluding managerial and supervisory employees, professional employees, employees engaged in personnel work in other than a purely non-confidential clerical capacity, security guards, Postal Inspection Service employees, employees in the supplemental workforce as defined in Article 7, rural letter carriers, mailhandlers, maintenance employees, special delivery messengers, motor vehicle employees, and postal clerks.

(b) In any like or related manner interfering with, restraining, and coercing employees in the exercise of rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Promptly, upon re-request, furnish the Union with the information found to have been unlawfully withheld from the Union as set forth in the remedy section of this decision.

(b) Within 14 days after service by the Region, post at its North Shepard Station in Houston, Texas, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on

forms provided by the Regional Director for Region 16, after being signed by the Respondents authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at its North Shepard Station at any time since December 28, 2001.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the Na-

tional Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."